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February 12, 1997

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VIA MESSENGER

Mr. William F. Caton
Acting Secretary
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

15 12 1997

RECEIVED COMMERCIAL WIRELESS DIVISION
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COMMERCIAL WIRELESS DIVISION
FEB 12 1997

Re: Notice of *Ex Parte* Contact
WT Docket No. 96-18

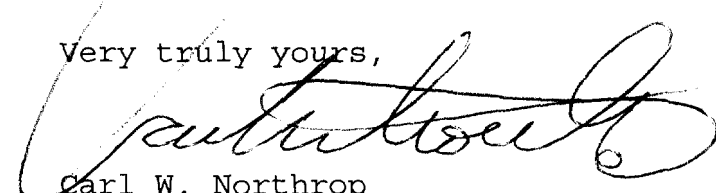
Dear Mr. Caton:

On February 11, 1997, Kathy Zachem and Carl Northrop, both representing Nationwide 929.8875 LLC, met today with Rosalind Allen and Karen Gulick of the Wireless Telecommunications Bureau to discuss the pending request for nationwide exclusivity on the frequency 929.8875 MHz. An outline of the presentation, which was distributed at the meeting is attached.

A copy of the written presentation also was hand-delivered David Furth of the Commercial Wireless Division.

Kindly refer any questions in connection with this matter to the undersigned.

Very truly yours,


Carl W. Northrop
of PAUL, HASTINGS, JANOFSKY & WALKER

Enclosure

cc: Rosalind Allen, Esquire (w/encl.)
Karen Gulick, Esquire (w/encl.)
Kathryn Zachem, Esquire (w/encl.)

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Presentation of Nationwide 929.8875 LLC
(WT Docket No. 96-18)

FEBRUARY 11, 1997

Background

- Nationwide 929.8875 LLC ("Nationwide LLC") is jointly owned and controlled by AirTouch Paging ("AirTouch") and Arch Communications Group ("Arch").
- AirTouch and Arch are in the process of securing the approval of the FCC to assign their respective exclusive regional system licenses on 929.8875 MHz to Nationwide LLC.
- Nationwide LLC is seeking a ruling from the FCC that it qualifies for nationwide exclusivity on the frequency 929.8875 MHz based upon the unique facts pertaining to this extensive network.

Chronology Respecting 929.8875 MHz

October 21, 1993

- The FCC adopts its Report and Order, FCC 93-479, in PR Docket No. 93-35 amending its rules to allow private carrier paging ("PCP") licenses to earn exclusivity on 929 PCP channels.

January 28, 1994

- AirTouch requests regional exclusivity for two 929.8875 MHz regional systems: one in a West/Southwestern region (WA, OR, CA, NV, AZ, NM, TX, OK, AR, LA, MS and AL) and one in a Central/Southeastern region (WI, IL, MO, MI, OH, IN, KY, TN, NC, SC, GA and FL).
- Arch requests regional exclusivity for two 929.8875 MHz regional systems: one in a Northeast region (CT, DC, MD, MA, ME, NH, NJ, PA, RI, VA and VT) and one in a Central region (IA, IL, IN, MI, MN, OH, SD, WI, KS, KY, MO and NE).

February 1994 to November 1995

- The AirTouch and Arch regional exclusivity requests are found by PCIA to meet the regional exclusivity standards and, ultimately, are granted by the Commission. Both parties proceed to construct their respective systems on an expedited basis.

November 22, 1995

- AirTouch and Arch enter into a Joint Operating and Affiliation Agreement to operate their exclusive regional 929.8875 MHz systems on a consolidated nationwide basis. A joint request for nationwide exclusivity for the integrated system (the "Joint Exclusivity Request") is filed with PCIA which, shortly thereafter, forwards it to the FCC for action.

February 8, 1996

- The FCC adopts its Memorandum Opinion & Order ("MO&O") in WT Docket No. 96-18 (Market Area Licensing for Paging) ruling that PCP operators who had completed construction of a compliant nationwide system (300 transmitters meeting certain geographic dispersion requirements) by February 8, 1996 will retain nationwide exclusivity.
- The MO&O did not rule on the Joint Exclusivity Request respecting 929.8875 MHz.

September 1996

- Arch and AirTouch agree, for business and operational reasons, to consolidate their separately-held but cooperatively operated 929.8875 MHz licenses in a jointly-controlled company. Approximately 8 assignment applications and 30 partial assignment applications are filed by Arch and AirTouch seeking FCC consent to assign their respective 929.8875 MHz licenses to Nationwide LLC.

November 19, 1996

- AirTouch and Arch file an amendment to their long-pending Joint Exclusivity Request. The amendment certifies that a sufficient number of dispersed 929.8875 MHz transmitters were in service as of February 8, 1996 for the combined system to qualify for nationwide exclusivity with the identified transmitters being counted, for Section 90.494(a)(5) purposes, as being dedicated to a single frequency: 929.8875 MHz.
- The amendment notifies the Commission that, for operational reasons, AirTouch and Arch are seeking the consent of the FCC to assign their respective 929.8875 MHz licenses to Nationwide LLC.

Present Status

- At present, the parties operate 1,176 transmitters on 929.8875 MHz.^{*/}
- Some of the many proposed assignments to Nationwide LLC have been approved by the FCC, but unexpected processing delays in Gettysburg have been encountered on the remaining applications.
- There has been no ruling to date by the FCC on the uncontested Joint Exclusivity Request filed November, 1995 and amended November, 1996.

^{*/} This total includes both the transmitters "dedicated" to 929.8875 MHz for counting purposes and other frequency-agile transmitters providing service on this frequency.

The Circumstances Surrounding The Joint Exclusivity Request Are Unique, And Would Not Require That Others Be Given Exclusivity

- The original agreement between AirTouch and Arch to integrate operations on 929.8875 MHz predated the Market Area Licensing NPRM by several months.
- The Joint Exclusivity Request predated the Commission's release of the Market Area Licensing NPRM which put PCP licensees on notice that the PCP exclusivity program was to be replaced by an auction mechanism.
- A compliant nationwide system, on a single-count, dedicated transmitter basis, was built prior to the February 8, 1996 construction deadline specified in the Market Area Licensing NPRM.

The Public Interest Is Served By Granting The Parties Nationwide Exclusivity on 929.8875

- The PCP exclusivity rules were intended to accord nationwide exclusivity to PCP licensees who made significant investments in dedicated transmitters in a geographically dispersed fashion on a particular channel throughout the U.S.
- Exclusivity will enable the parties to continue to build out the nationwide system on an expedited basis.
- According exclusivity to the extensive 929.8875 MHz system will foster additional competition in the nationwide market which serves the public interest by increasing customer options for this service.
- The parties made sufficient investments to earn exclusivity and had a reasonable expectation that they would be accorded exclusive status; the rules should not be changed in mid-stream.
- Other carriers have been granted nationwide exclusivity on systems originally grandfathered as exclusive regional systems. Fairness requires the same result here.

Draft Language for the Report and Order

- We are granting the request of Nationwide 929.8875 LLC ("Nationwide") for nationwide exclusivity on the frequency 929.8875 MHz. Nationwide is jointly owned and controlled by AirTouch Paging ("AirTouch") and Arch Communications Group, Inc. ("Arch"), who are in the process of securing Commission consent to assign their respective exclusive regional system licenses to Nationwide. Since November of 1995, AirTouch and Arch have been parties to a Joint Operating and Affiliation Agreement to operate their 929.8875 MHz facilities on an integrated basis to provide nationwide service. Their joint request for nationwide exclusivity for the channel has been pending since November of 1995 as well, and is uncontested. That request, as amended in November 1996, certifies that a sufficient number of dedicated and dispersed 929.8875 MHz transmitters were in service as of February 8, 1996 for the combined systems to meet the nationwide exclusivity criteria in accordance with Section 90.494(a)(5) of our Rules. We find that the public interest is served by granting nationwide exclusivity on 929.8875 MHz to the newly formed entity based upon the unique facts that are presented.^{*/}

^{*/} We consider it to be decisionally significant that the cooperative arrangement between Arch and AirTouch, and the request for nationwide exclusivity, both predated the release of the Notice of Proposed Rulemaking in this docket.